IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.8.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.875 of 2003

B.Sasikala .. Petitioner/ defendants

vs.

1.M.Venugopal Chettiar

2.V.Mohanasundaram .. Respondents/ Plaintiffs

Revision Petition filed against the order dated 8.3.2002 made in I.A.No.937/2001 in O.S.No.662/1995, on the file of the Addl.Sub Court, Salem.

For Petitioner : Mr.P.Jagadeesan
For Respondents : Mr.V.Srinivasan

ORDER:

This Revision Petition has been filed against the order dated 8.3.2002 made in I.A.No.937/2001 in O.S.No.662/1995, on the file of the Addl.Sub Court, Salem.

2. The defendant in O.S.No.662/1995 on the file of the Addl. Sub Court, Salem is the Revision Petitioner.

3. O.S.No.662/1995 was filed by the respondents herein to pass a preliminary decree on the basis of an equitable mortgage created by the defendant directing the defendant to pay a sum of Rs.2,38,001/- to the 1st plaintiff with future interest at contract rate for the three pronotes till realisation, directing the defendant to pay a sum of Rs.3,28,649/- to the 2nd plaintiff with future interest at contract rate till realisation failing which passing a final decree whereby the hypothecated property detailed in the suit schedule may be ordered to be sold in public auction for the realisation of the amount decreed and for the cost of the suit.

4. The defendant filed a memo before the trial court admitting the suit claim and on the basis of the memo, preliminary decree was passed by the trial court on 6.1.2000. Subsequently on the basis of the preliminary decree, a final decree was passed by the trial court in I.A.No.24/2001 on 15.3.2001. Since no payment was made as per the

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decree an execution petition was filed and that was returned with an endorsement no order regarding future interest was incorporated in the decree. Therefore the plaintiffs filed I.A.No.937/2001 under Sec.152 of Civil Procedure Code to add in para 2(1) "with interest at 30% till the date of realisation". This I.A.No.937/2001 was allowed by the trial court on 8.3.2002 on the ground that no counter was filed by the defendant. Challenging this order dated 8.3.2002 the defendant has filed the above Civil Revision Petition.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents. I have also gone through the documents filed in support of their submissions.

6. The learned counsel for the revision petitioner submitted that the trial court has no jurisdiction to allow I.A.No.937/2001 by amending the preliminary decree under Order 6 Rule 17 of C.P.C. after the final decree was already passed.

7. I am unable to accept the contentions of the learned counsel for the petitioner. I.A.No.937/2001 was not filed under Order 6 Rule 17 of C.P.C., but the same was filed under Sec.152 of C.P.C. to amend the preliminary decree as according to the plaintiffs the office committed an error while drafting the decree in not incorporating the interest portion of the judgment of the trial court.

8. Section 152 of C.P.C. reads as under:-

> "Sec.152: Amendment of judgments, decrees or orders:- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties."

9. From the above, it is very clear that Sec.152 of C.P.C. empowers the trial court to rectify any clerical or arithmetical errors or accidental slips at any time.

10. The plaintiffs averred in the plaint that the pronotes were executed by the defendant agreeing to repay the loan amount with interest at 30% on demand. In the prayer portion also, the contract interest was claimed by the plaintiffs. It was observed by the trial Judge while passing the judgment and preliminary decree on 6.1.2000 that the defendant submitted to decree by filing a memo. It was specifically stated in the judgment dated 6.1.2000 that the suit is decreed as prayed for with costs. Therefore the plaintiffs are correct in saying that while drafting the preliminary decree the office omitted to incorporate the interest portion and therefore they filed I.A.No.937/2001 to incorporate the interest portion which was accidentally omitted to be included by the office.

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11. The Revision Petitioner did not file any counter before the trial court opposing the I.A.No.937/2001, nor any petition was filed by the defendant to set aside the exparte order passed in I.A.No.937/2001. But the correctness of the same is being challenged before this court for the first time by contending that the trial court has no jurisdiction to amend the preliminary decree once the final decree has already been passed.

12. I have already held that the petition was filed under Sec.152 of C.P.C. to include the interest portion which accidentally slipped the office while drafting the preliminary decree. Therefore what was added in the decree on the basis of the orders passed in I.A.No.937/2001 is only a correction by the trial court to rectify the mistake under Sec.152 of C.P.C. and it is not amendment carried out under Order 6 Rule 17 of C.P.C. as contended by the learned counsel for the petitioner.

13. I do not find any illegality nor infirmity in the order of the trial court warranting interference under Sec.115 of C.P.C. and therefore the Civil Revision Petition is liable to be dismissed.

14. In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs. C.M.P.No.13497/2003 is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks

To

The Addl. Subordinate Judge, Salem.

1 cc to Mr.V.Srinivasan, Advocate, Sr. 38830
1 cc to Mr.P.Jagadeesan, Advocate, Sr. 38766

C.R.P.(NPD)875/03.

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